

IN THE MATTER OF	:	BEFORE THE
<b>WESLEY &amp; REBECCA JENSON</b>	:	HOWARD COUNTY
<b>t/a ARROWWOOD SHEPHERDS, INC.</b>	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 05-033C

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### **DECISION AND ORDER**

On March 20, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Wesley and Rebecca Jenson, t/a Arrowwood Shepherds, Inc., Petitioners, for a conditional use for a dog kennel and pet grooming establishment in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Section 131.N.30 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

E. Alexander Adams, Esquire, represented the Petitioners. Ronald Spahn, Esquire, represented those in opposition to the petition. Wesley Jenson and Susan Ziobro testified in support of the petition. Mark Shaffer, David Owens, Carl Layton, Bonnie Becraft, Graham Becraft, Jr., and Carolyn Shaffer testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioners own the subject property, known as 3101 Florence Road, which is located in the 4<sup>th</sup> Election District on the northeast side of Florence Road about 200 feet south of Jennings Chapel Road in Woodbine (the “Property”). The Property is referenced on Tax Map 13, Block 9 as Parcels 137.

2. The Property is a trapezium-shaped parcel consisting of about 5.13 acres. The Property has about 500 feet of frontage on Florence Road, but narrows to the rear where it is about 269 feet wide. The Property is about 515 feet deep along its west side and 673 feet deep along its east side lot line.

The Property is improved with a two-story, single-family dwelling located in the southeast portion of the lot about 175 feet from Florence Road and about 80 feet from the east side lot line. A 6’ tall fence encloses a small area behind the house. About 90 feet to the southeast of the house is a detached two-bay garage situated about 50 feet from Florence Road. A gravel driveway beginning along the center of the Florence Road frontage runs southeast to the house and garage.

The area around the buildings is predominantly open lawn. A buffer of vegetation is located along the road frontage. The west and north portions of the Property are wooded. The Property slopes moderately from the southeast to the north and west.

3. All vicinal properties are zoned RC-DEO. To the north and west of the Property is Parcel 22, a 54.87-acre farm governed by an agricultural land preservation easement. To the east is Parcel 33, a 90.87-acre farm parcel also covered by an

agricultural land preservation easement. A one-story, single-family detached dwelling fronting Florence Road is located in the southern portion of Parcel 33 about 400 feet from the Property line.

Across Florence Road to the south are Parcel 23 and Lot 1 of Parcel 333, each of which is improved with a two-story, single-family detached dwelling.

4. The Petitioners propose to establish on the Property a dog-training and boarding facility for up to 10 dogs. The facility would be operated from a kennel building to be located at the rear of the Property about 100 feet from the rear lot line and about 400 feet from the front lot line. The building will consist of a one-story structure approximately 100 feet wide and 25 feet deep with 10 indoor/outdoor kennel runs on the north side of the building. The building will contain the runs, a dog bathing area, an indoor training area, an office, kitchen, laundry room and bathroom. The building will be surrounded by a 6' wood privacy fence that will extend from the front of the building to within about 10 feet of the rear lot line. This fenced area will be used as an outdoor dog training and exercise area.

The facility will be accessed from a paved driveway beginning at a point to the west of the existing driveway and running north to a paved parking area for twelve vehicles to be located in front of the building. A split-rail perimeter fence will enclose the rear half of the Property and will be gated at the driveway. The Petitioners propose to maintain the existing trees along the perimeter of the Property and between the house and the facility.

5. The facility will be in operation from 7:00 a.m. to 8:00 p.m., seven days a week. The only employees will be the Petitioners. The facility will be used primarily for

dog training and will be board up to 10 dogs. The petitions states that the Petitioners may also consider operating a “doggy day care” during the week within the facility with some supervised outdoor activities. The Petitioners’ Exhibit 1 states that dogs will not be permitted outdoors before 9:00 a.m. or after sundown. Motion detection security lighting will be installed on the building.

5. The 2000 General Plan designates the Property as a “Rural Conservation” land use. The Property will be served by private water and septic facilities. Florence Road is a major collector roadway with two travel lanes and 20 feet of paving within an existing variable width right-of-way and a proposed 60-foot wide right-of-way. The speed limit in the area of the Property is 30 mph. Visibility from the proposed entrance road is over 550 feet in each direction.

6. Wesley Jenson testified that he anticipates that dogs will be boarded between one and three days. The building will be insulated and soundproofed with 3” foam insulation and brick. Each dog run will be 4’ by 5’ in dimension. On cross-examination, Mr. Jenson stated that he currently trains dogs in the back yard of his house. He stated that he owns eight dogs as pets which are kept within the house and fenced area behind the house. Mr. Jenson amended his petition to state that, other than his pets, no more than 10 dogs will be allowed on site at any one time.

7. Those in opposition testified that, since the Jensions moved to the Property, they have heard constant loud barking coming from the Property. They also testified that the intersection of Florence Road and Jennings Chapel Road has had several major accidents and is a dangerous intersection.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

**I. General Criteria for Conditional Uses (Section 131.B).**

A. General Plan. The Howard County General Plan designates the area in which the Property is located as a “Rural Conservation” land use. Dog kennels are commonly found in rural areas and are presumptively considered compatible with residential land uses. The proposed kennel for 10 dogs is of relatively low intensity. The kennel will be located toward the rear of the 5.13-acre Property. The development will have access to Florence Road, a major collector. Accordingly, the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed kennel has adverse effects in the RC zone. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the RC district.

For the reasons stated below, I find that the Petitioners have met their burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a kennel in the RC district:

1. Physical Conditions. The Petitioners' proposed dog kennel will consist of typical activities associated with a dog kennel. The proposed use will be of relatively low intensity, given that it will be limited to 10 dogs at any one time. The dogs will be kept indoors most of the time. Dogs will be allowed outdoors only between 9:00 a.m. and sundown. The dog runs and outdoor training/exercise area are behind the facility at the rear of the Property, more than 400 feet from the road and a greater distance to any vicinal home. The building will be soundproofed. Therefore, noise will be more than adequately buffered by distance and the existing trees. Waste material will be disposed of on site. Only motion detection security lighting will be installed on the building. The driveway and parking area will be paved. The use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a dog kennel in the RC zoning district, as required by Section 131.B.2.a.

2. Structures and Landscaping. The proposed building will be located at the rear of the Property and well separated and buffered from the road and vicinal residential properties. In addition, the building and dog runs will be well screened from the adjoining properties by the proposed 6' privacy fence. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or

development of the adjacent land and structures more at the subject site that it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioners will provide twelve parking spaces in the parking area in front of the building. The parking area and drive are located toward the rear of the site and will be adequately screened from Florence Road and vicinal residential properties by distance and landscaping. Consequently, parking areas are of adequate size and parking areas and driveways are properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The access drive from Florence Road is properly located and has adequate sight distance in both directions. Because the site will receive few visitors at any one time, acceleration or deceleration lanes are unnecessary. Consequently, the ingress and egress drive will provide safe access with adequate sight distance and with adequate acceleration and deceleration lanes where appropriate, as required by Section 131.B.2.d.

## **II. Specific Criteria for Kennels and Pet Grooming Establishments (Section 131.N.30).**

1. Section 130.N.30.a applies to kennels housing or training eleven or more animals at one time. Because the Petitioners have stated that no more than 10 dogs will be on site at any one time, Section 131.N.30.a does not apply.

2. Section 131.N.30. b provides:

*For pet grooming establishments not located completely within an residence, or for kennels housing or training no more than ten animals at one time, the following requirements shall apply:*

*(1) Minimum lot size..... 3 acres*

The Property is 5.13 acres in area, and therefore meets this requirement.

*(2) Minimum setback for outside pens and runs from any lot line .....100 feet*

The outside pens are 100 feet from the north lot line and more than 100 feet from all other lot lines, and therefore meet the minimum required under this provision.

*(3) Minimum structure setback*

*(a) From public street right-of-way .....75 feet*

The building is 400 feet from Florence Road - significantly more than the minimum required.

*(b) From any other lot line .....30 feet*

The building is 100 feet from the north lot line and more than 30 feet from the side lot lines. The structure meets the minimum setbacks required by this provision.

3. Section 130.N.30.c concerns grooming establishments and is therefore inapplicable.

4. The proposed parking areas and outside pens and runs, and all buildings will be adequately screened by landscaping or separated by ample space from adjoining properties and public street rights-of-ways, as required by Section 130.N.30.d.

5. Waste will be disposed of on site. Given the distance from lot lines to the building, I find that the disposal of wastes will be such that odors or other emissions will not be perceptible at lot lines, in compliance with Section 130.N.30.e.



6. The Property has frontage on Florence Road, a major collector, in compliance with Section 130.N.30.f.

### **III. Opposition Testimony.**

Once a petitioner presents sufficient evidence establishing that its proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, it is then incumbent upon those opposed to the petition to show that the use at the proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995). While those in opposition in this case expressed concerns about the potential impact of the proposed use of the property, the evidence placed before me does not sufficiently demonstrate any adverse effects unique or different than those ordinarily associated with a kennel in the RC district.

Much of the testimony presented by those in opposition amounted only to unsupported opinions and general conclusions that the facility will cause noise and traffic hazards. Maryland courts instruct that the unsupported conclusions or fears of witnesses to the effect that a proposed use of property will or will not result in harm amount to nothing more than vague and general expressions of opinion which are lacking in probative value. *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974). Because the Opposition's testimony in this case was unsupported by any evidence that the anticipated harmful effects are likely to occur, I must afford it little weight.

In this case, the Opposition testimony focused on the noise currently created by the Petitioners' dog training activities. The Petitioners' proposal, however, is expressly designed to alleviate this problem. The improvements proposed by the Petitioners will undoubtedly mitigate the possibility of any extraordinary noise or odors emanating from the Property. The soundproofed facility will be located at the rear of the site and surrounded by a 6' privacy fence and landscaping. The number of dogs will be limited to 10 and will not be permitted outdoors before 9:00 am and after sundown. I have no reason to believe that these measures will not be an effective means of obviating any potential extraordinary adverse effects from vicinal properties.

For these reasons, I find that the opposition has failed to adequately show that the proposed use at the proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone.

**ORDER**

Based upon the foregoing, it is this **4<sup>th</sup> day of May 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Wesley and Rebecca Jenson, t/a Arrowwood Shepherds, Inc., Petitioners, for a conditional use for a dog kennel and pet grooming establishment in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District is hereby **GRANTED;**

**Provided, however,** that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted, as amended, and not to any other activities, uses, structures, or additions on the Property, and **subject to the following conditions:**

1. No more than 10 dogs (other than the Petitioners' pets) will be present on the Property at any one time; and
2. Neither the garage nor the rear yard of the house may be used for activities under this conditional use.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

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Thomas P. Carbo

Date Mailed: \_\_\_\_\_

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.